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Thomas
Turner/R5/USEPA/US
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To
Subject Old American Zinc Plant (OAZ) Superfund Site (IL) - Interest
of Site property owner (XTRA Intermodal) in sampling
results, data

Mr. Greenberg:

Hello. I received a telephone call earlier today from counsel for XTRA Intermodal, Inc. (Mr. Steinberg). Mr. Steinberg noted that in following up on the September 27, 2006 letter that he addressed to your client concerning access to copies of sampling results taken on his client's property, he was informed that some involved materials had been destroyed, and that his client's right to access to sampling results and procedural records from the sampling activities on XTRA Intermodal's property might not be recognized.

U.S. EPA does not seek to become involved in this matter, beyond stating that the provisions of the June 6, 2005 Administrative Order on Consent (AOC) between U.S. EPA and Blue Tee, Inc. and the General Services Administration (as well as the June 6, 2005 unilateral Administrative Order (UAO) issued to XTRA Intermodal) require good faith efforts at cooperation, coordination and participation by all parties in the performance of the Remedial Investigation/Feasibility Study at the Site.

U.S. EPA would note that the AOC (at paragraph 46) and the UAO (at paragraph 65) allow all above-named parties the protection of 42 USC Section 9604(e)(7) in terms of confidential information, records or processes used by any of the parties in the sampling process. This would suggest that the active parties and owner in this matter are equally protected and should be able to effectuate reasonable communications and good faith exchange of objective data and collection process records as they exist, pursuant to 42 USC 9604(e)(4)(B).

It has been the experience of U.S. EPA that federal courts can be very sensitive to the rights of property owners to be protected, even subject to CERCLA. U.S. EPA, in its own information gathering activities, will make all non-confidential or not otherwise protected information gathered during a sampling activity available to a property owner.

U.S. EPA is specifically interested in making certain that the RI/FS proceeds smoothly and timely at this Site. Therefore, if our office can be of some help in working out this potential disagreement between the parties, in a proper and acceptable manner under U.S. EPA's federal mission and authority, we will entertain any such requests.

Please feel free to contact me with any comments or questions by e-mail or at 312/886-6613.